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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Subcommittee
Thirtieth session
New York, 25 March-12 April 1991
Agenda item 4

DRAFT REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 4 (MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION)

1. On 25 March 1991, the Legal Subcommittee re-established its Working Group on agenda item 4.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its twenty-ninth session in 1990 (A/AC.105/457), which contained, in annex II, the report of the Chairman of the Working Group at the twenty-ninth session; it also had before it the report of the Scientific and Technical Subcommittee on the work of its twenty-eighth session in 1991 (A/AC.105/483), which considered, in chapter VI, inter alia, the subject of the "physical nature and technical attributes of the geostationary orbit".

3. The following documents submitted at previous sessions of the Legal Subcommittee and of the Committee on the Peaceful Uses of Outer Space were referred to in the course of the discussions: "Approach to the delimitation of airspace and outer space", submitted to the Subcommittee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/C.2/L.139); "Draft general principles governing the geostationary orbit", submitted to the Subcommittee at its twenty-third session by the delegations of Colombia, Ecuador, Indonesia and Kenya (A/AC.105/C.2/L.147); "Draft basic provisions of the General Assembly resolution on the delimitation of airspace and outer space and on the legal status of the geostationary satellites' orbital space", submitted to the Committee at its twenty-second session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.112); "Compromise proposal on the question related

to the definition and delimitation of outer space", submitted to the Committee at its thirtieth session by the delegation of the Union of Soviet Socialist Republics (A/AC.105/L.168); and a "working non-paper" circulated at the Subcommittee's twenty-eighth session in 1989 (A/AC.105/430, annex II, para. 20).

4. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that each aspect of the agenda item (namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other) should be discussed by the Working Group separately.

5. The views expressed in the discussion within the Working Group are summarized below.

Question of the definition and delimitation of outer space

6. Some delegations, reiterating views expressed at previous sessions of the Subcommittee, stated that delimitation of airspace and outer space was a practical and legal necessity in order to establish a distinct boundary between the legal regime of airspace, with its inherent features of State sovereignty, territorial integrity and security, and the legal regime of outer space, which provided for the free exploration and use of outer space for the benefit of all countries. Those delegations believed that a delimitation of airspace and outer space was necessary in particular to determine the limits of the area governed by international space law. Some of those delegations expressed the view that, while at present there might not be agreed scientific criteria available for determining precisely the altitude at which airspace ended and outer space commenced, international custom had developed to the effect that the lowest perigee of orbiting satellites lay in outer space. Some of those delegations also expressed the view that the delimitation of outer space should be accomplished by a legally binding international instrument, and that such instrument should take into account relevant provisions of the Chicago Convention on International Civil Aviation. Some delegations expressed the view that the rapid progress of space technology, including flights of reusable spacecrafts which land in aircraft mode, and the future advent in some countries of aerospace systems which would be able to operate both in outer space and in airspace, was an additional argument in favour of establishing an agreed boundary between airspace and outer space.

7. Some delegations considered the working paper submitted by the delegation of the Union of Soviet Socialist Republics to the Subcommittee at its twenty-second session in 1983 (A/AC.105/C.2/L.139) to be a good basis for a solution to the question under discussion. These delegations expressed their preparedness to consider any interim measures aimed at the eventual settlement of the question of delimitation. In particular they referred to the proposals to consider the lowest perigee of an orbiting satellite as a lower boundary of outer space and to confirm the norm of customary law whereby all artificial Earth satellites placed in Earth orbit are considered to be in outer space. The view was also expressed that without agreed-upon delimitation, the possibility existed of unilateral delimitations of airspace which would create confusion, and every effort should be

made to avoid such an eventuality. The view was expressed that a boundary between airspace and outer space could be established at an altitude of 90 kilometres above sea level.

8. Other delegations, reiterating views expressed at previous sessions of the Subcommittee, stated that there was at present no need for establishing a boundary between airspace and outer space. They believed that the lack of such a boundary had not led to any practical problems in the peaceful exploration of outer space, nor had it been an obstacle in the field, and that the utmost freedom of action was required for the successful continuation of such peaceful exploration for the benefit of all countries. Those delegations expressed the view that so far no convincing juridical and practical reasons had been introduced in favour of establishing an arbitrary line delimiting airspace and outer space and that, without clear scientific criteria, the delimitation would not only be inappropriate, but could also lead to a curtailing of future space activities. They noted that the current differing legal regimes applicable to airspace and outer space had operated well in their respective spheres, complementing and accommodating each other for the benefit of all States and peoples. The delegations stated that that smooth relationship had been possible largely because of, and not in spite of, the absence of an artificial delimitation between outer space and airspace. The view was also expressed that the future advent of aerospace vehicles did not adequately justify the delimitation of airspace and outer space.

9. Some delegations stated that in a spirit of good will and compromise and with the aim of finding mutually acceptable solutions, the Subcommittee, at its current session, should take an agreed decision to commence, at its next session in 1992, an exchange of views on the international legal aspects of future exploitation of aerospace systems. Those delegations believed that such an exchange of views could clarify a conceptual approach to the problem and would lead to a better understanding as to the expediency of elaborating, in the future, international legal rules regulating flights of aerospace systems at certain altitudes, in particular, rules concerning innocent passage through foreign airspace. In the view of those delegations, while there was an evident practical link between the problem of delimitation and the problem of regulating flights of aerospace systems, the consideration of the latter problem could commence before resolving the former one, and the Subcommittee could discuss them simultaneously. One of those delegations stated that, if the above-mentioned agreed decision was taken at the Subcommittee's current session, that delegation would be prepared to submit to the Subcommittee, at its next session in 1992, a working paper containing specific draft provisions regulating the utilization of aerospace systems at certain altitudes.

10. In reply, other delegations stated that it was difficult for them to support the adoption of the above "agreed decision" without a clear understanding as to what the implementation of that decision would involve. Those delegations expressed the view that they would need more information, perhaps in the form of a working paper or draft articles, in order to determine their position with regard to the above proposal, and that no consensus decision was needed in order to allow an interested delegation to submit a relevant working paper or to present and

elaborate its views in oral statements. The view was expressed that the development of aerospace systems in various countries was still at the early research stage and that not enough was known about those systems to justify consideration of the matter in the near future. The view was also expressed that the delegation sponsoring the above proposal should be invited by the Working Group to submit a working paper concerning the international legal aspects of aerospace systems.

11. Some delegations expressed the view that, since there was no likelihood of producing tangible results in the consideration of the question of the definition and delimitation of outer space, the Subcommittee should consider dropping the item from its agenda or significantly reducing the time allotted to it. Other delegations expressed the view that the item should remain on the agenda of the Subcommittee and should be discussed in a constructive manner with all the delegations demonstrating a will to reach compromise.

Question of the geostationary orbit

12. After informal consultations on the subject, at the third meeting of the Working Group on 28 March 1991, a "working non-paper" was circulated by a group of delegations. The Chairman of the Group of 77, the Observer from Ghana, referring to that document, stated that it had been prepared by a number of countries members of the Group of 77. The Group of 77 welcomed that initiative and had come to the conclusion that the document could serve as a basis and starting-point for constructive deliberations in the Working Group, without prejudice to any other proposals or documents on the subject, which had been or would be introduced in the Legal Subcommittee on the subject. The text of the "working non-paper" was as follows:

"GEOSTATIONARY SATELLITE ORBIT

"1. The geostationary satellite orbit is a limited natural resource and, therefore, must be used in a rational and equitable manner and for the benefit of all mankind, taking into account the special needs of the developing countries.

"2. The development of space science and technology applied in the utilization of the geostationary satellite orbit is of fundamental importance for the economic, social and cultural development of the peoples of all States.

"3. The geostationary satellite orbit must be used exclusively for peaceful purposes for the benefit of all mankind through promoting international cooperation and understanding.

"4. The geostationary satellite orbit is a geometric locus in outer space where an object in orbit behaves differently with respect to the Earth from the way in which it would behave in any other locus in outer space.

"5. In view of all the foregoing, a special legal regime, complementary to that governing such other loci in outer space, is needed so as to ensure that the resource in question is used, in accordance with the relevant international agreements, in a rational, effective, economical and equitable manner.

"6. All States should be guaranteed in practice equitable access to the geostationary satellite orbit, in accordance with articles 10 and 33 of the Nairobi ITU Convention.

"7. In practice, equity would be achieved through the establishment of a concrete, specific preference, which would consist in the following:

"7.1 Where a developed country and a developing country have equal claims to access to the same orbital position, or where a country which has already had access and another country which has not yet had access have equal claims, preference shall be given to the developing country or to the country which has not yet had access."

13. Replying to a request for explanation, one delegation which had participated in the preparation of the "working non-paper", clarified certain elements of that document and stated, in particular, that the "working non-paper" did not touch upon certain ideas which had caused controversy in deliberations at previous sessions of the Working Group and could be used as a point of departure in the discussion.

14. Some delegations expressed their gratitude to the authors of the "working non-paper" and stated that, while some elements therein might require further elaboration, the document could serve as a useful basis for future negotiations in the Working Group.

15. Some delegations expressed the view that certain elements of the "working non-paper", such as contained, for example, in its paragraphs 1, 2 and 6, did not give rise to any difficulties, had not been criticized in the past and, therefore, might be acceptable to all.

16. A question was raised by one delegation concerning how the following situation would be resolved under the formulation in paragraph 7.1: a claim of a developed State which has technical capability to immediately launch a satellite to a GSO orbital position is opposed to a claim of a developing State which intends to launch a satellite to the same position but has no technical capability to do so in the immediate future. In reply, it was stated by one of the authors of the "working non-paper" that in such a situation only substantiated claims should be taken into account.

17. The view was expressed by the observer of International Telecommunication Union (ITU) that some elements contained in the "working non-paper" overlapped with procedures already accepted in ITU and, therefore, closer coordination with ITU might be necessary in future deliberations in the Working Group on the document, and that two satellites might have access to the same orbital position on the geostationary orbit, provided that they are using different radio frequencies.

18. One delegation stated that ITU acted in accordance with the will of States, since it defined its policies at a General Assembly in which all its member States participated. The delegation also stated that the proposal was aimed at solving the problems that might arise through radio-frequency interference, since it was known that more than one satellite could occupy a single orbital position, depending on the orientation of their beams and as long as different radio frequencies were involved.

19. The view was expressed that the contents of the "working non-paper" constituted a number of statements, rather than legal principles, and, while some of those statements were acceptable, others gave rise to certain doubts. It was further stated that the formulation of paragraph 4 of the "working non-paper" was not quite clear and would need to be clarified through technical advice from natural scientists.

20. The Chairman of the Working Group stated that the introduction of the "working non-paper" was a useful and constructive development, which gave hope for positive and promising debate in the future.

21. The Working Group held its final meeting on 3 April, when it considered and approved the present report.